










CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	09-18-07	AGENDA REQUEST NO:	III J
INITIATED BY:	KEISHA E. SEALS, ENGINEER II 	RESPONSIBLE DEPARTMENT:	ENGINEERING
PRESENTED BY:	PATRICK WALSH, P.E. ASSISTANT CITY ENGINEER	DEPARTMENT HEAD:	CHRISTOPHER L. STEUBING, P.E., CITY ENGINEER 
		ADDITIONAL DEPARTMENT HEAD (S):	N/A
SUBJECT / PROCEEDING:	U.S. HIGHWAY 90A WIDENING PROJECT CONSTRUCTION OF ACCESS ROAD TURNOUTS AT ALKIRE LAKE ESTATES APPROVAL OF TXDOT CHANGE ORDER NO. 17		
EXHIBITS:	EXHIBIT 1 - ACCESS ROAD AND TURNOUT LOCATIONS EXHIBIT 2 - TURNOUTS DETAIL DRAWING ADVANCED FUNDING AGREEMENT (AFA) CHANGE ORDER NO. 17		
CLEARANCES		APPROVAL	
LEGAL:	MEREDITH WILGANOWSKI, ASSISTANT CITY ATTORNEY 	EXECUTIVE DIRECTOR:	JIM CALLAWAY  COMMUNITY DEVELOPMENT
PURCHASING:	JENNIFER MONTGOMERY PURCHASING MANAGER 	ASST. CITY MANAGER:	N/A
BUDGET:	JENNIFER BROWN  ASSISTANT FISCAL SERVICES DIRECTOR	CITY MANAGER:	ALLEN BOGARD 
BUDGET			
EXPENDITURE REQUIRED: \$		46,905.16	
AMOUNT BUDGETED/REALLOCATION: \$		245,781	
ADDITIONAL APPROPRIATION: \$		N/A	
RECOMMENDED ACTION			
The Engineering Department recommends approval of the Advanced Funding Agreement (AFA) associated with the Texas Department of Transportation (TxDOT) Change Order No.17 for the construction of two (2) access road turnouts for the U.S. Highway 90A Widening Project in an amount not to exceed \$46,905.16.			

EXECUTIVE SUMMARY

TxDOT's U.S. Highway 90A widening project included the construction of an access road for the residents of Alkire Lake Estates along the south side of U.S. Highway 90A. This road is now constructed and provides access to U.S. 90A for the residential properties between Alkire Lake Drive and Lombardy that are now behind an access barrier wall (see **Exhibit 1**).

In 2006, residents along the access road raised concerns regarding the ability for larger vehicles to turn around at the ends of the road. Vehicles that could have difficulty turning around include emergency vehicles, school buses, trash pickup trucks, and delivery trucks. The Engineering Department, working in concert with Fire and Public Works, reviewed the road design and concluded that improvements were needed in order to provide adequate access for public services.

To address the problem, the Engineering Department contracted with TxDOT's design consultant to design "turnouts" to be placed at the ends of the access road (see **Exhibit 2**). These turnouts provide adequate turning ability for trucks to maneuver a turn safely while eliminating the need for additional right-of-way from the property owners. To further facilitate turning movements, TxDOT will also increase the radius for one property owner whose driveway is opposite the turnout to the east. The property owner opposite the other turnout to the west declined the City's proposal to improve their driveway radius.

The City did approach TxDOT to explore the possibility of sharing the costs for these improvements. However, on the basis that this access road was installed at the request of the property owners, and the change was requested after the plans were approved, TxDOT declined to participate.

Contingency funding for this purchase is available in CIP No. ST0303 with a remaining balance of \$245,781.

EXHIBITS

Exhibit 1

Access Road and Turnout Locations



EXHIBIT 2
Turnouts Detailed Drawing

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District: Houston
Code Chart 64: 41150
Project: US 90A: West of
US 59 to Brooks
(Old Spur 58)

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH
CHANGE ORDER NUMBER 17**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State", and the City of Sugar Land, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, Commission Minute Order Numbers 107737 authorizes the State to undertake and complete a highway improvement generally described as the widening of US 90A to an eight-lane divided highway with curb and gutter; and,

WHEREAS, the Local Government has requested that the State allow the Local Government participate in said improvement by funding that portion of the improvement described as the Venetian Estates Access Road Turnouts, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

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NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Project Budget and Description which is attached to and made a part of this contract.

In addition to identifying those items of work paid for by payments to the State, Attachment A, Project Budget and Description, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

The Local Government will transmit to the State with the return of this Agreement, executed by the Local Government its financial share for the State's estimated construction oversight and construction costs.

In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.

Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

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Article 3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

Article 4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

Article 5. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider.

Article 7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

Article 8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Project Budget and Description, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

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Article 9. Increased Costs

In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 11 - Termination. If this is a fixed price agreement as specified in Attachment A, Project Budget and Description, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

Article 10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

Article 11. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- ◆ Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

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Article 12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:

City Engineer
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110

State:

District Engineer
Texas Department of Transportation
P. O. Box 1386
Houston, Texas 77251-1386

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 15. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 16. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor,

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under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 17. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 18. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

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THE LOCAL GOVERNMENT

THE CITY OF SUGAR LAND

By _____ Date _____

Typed or Printed Name and Title _____

Attest:

By _____ Date _____
City Secretary

Legal Department Approval

By Meredith Wilkerson

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ATTACHMENT A

Project Budget and Description

The Local Government will pay for the cost of the construction of the Venetian Estates access road turnouts. The subject change order widens the access road to 29 ft beginning from Station 11+21.19 to Station 12+95.60 and widens the access road to 34 ft beginning from Station 24+54.02 to Station 25+57.61. The Local Government's participation is 100% of the cost of this particular improvement. The Local Government's estimated cost of this additional work is \$46,905.16, including construction items, and engineering and contingencies. The State has estimated the project to be as follows:

Description	Total Estimate Cost	State Participation		Local Participation	
		%	Cost	%	Cost
CONSTRUCTION COSTS					
0027-08-143 – CHANGE ORDER 17					
Change Order 17 Total	\$43,632.71	0%	\$0.00	100%	\$43,632.71
Subtotal	\$43,632.71	0%	\$0.00	100%	\$43,632.71
Direct State Costs* (including plan review, inspection and oversight)	\$3,272.45	0%	\$0.00	100%	\$3,272.45
TOTAL	\$46,905.16	\$0.00		\$46,905.16	

* Direct State Costs will be based on actual charges.

Local Government's Participation (100%) = \$46,905.16

It is understood that the proposed improvements will be done by the State and the Local Government will transmit to the State with the return of this Agreement, executed by the Local Government, a warrant or check in the amount of \$46,905.16 made payable to the "Texas Department of Transportation Trust Fund" to be used solely for the cost of improvements as requested by the Local Government. It is further understood that the State will include only those items for the improvements as requested and required by the Local Government. This is a construction estimate only, final participation amounts will be based on actual charges to the project.

CIP CHANGE ORDER REQUEST

Date: 8.14.2007 Change Order #: 3
P.O. #: _____ Department: Engineering
Program #: 303 Notice to Proceed Date: N/A
Project Title: US Highway 90A Project #: ST0303
Requested By: Keisha E. Seals Phone Ext: 2274
Contractor: TxDOT Contract Date/Time: _____

Change Order Description:

TxDOT Change Order #17, for the COSL request to revise the Venetian Estates Access Road with additional pavement, called "Turnouts". The original plans call for the access road to be a width of 23-lineal feet. The City expressed concerns on the lack of turn area for large wheel based vehicles such as school buses, delivery trucks and emergency vehicles. The subject change order widens the access road to approximately 29-34 feet at each end of the constructed access road as well as the widening of one driveway radius on the west end of the access road.

Price Impact:

A. Original Contract Amount:	<u>\$4,200,000.00</u>
B. Current Change Order Amount:	<u>\$46,905.16</u>
C. Previous Change Orders:	<u>\$12,421.95</u>
D. Cumulative Change Order Amount (B + C): *	<u>\$59,327.11</u>
E. Percent of Original Contract (D ÷ A):	<u>1.41%</u>
F. Revised Contract Amount (A+D): **	<u>\$4,259,327.11</u>

*Cumulative change order amount (Line D) must not exceed 25% of original PO amount.



**If new purchase order total (Line F) exceeds \$25,000 and original purchase order amount (Line A) is less than \$25,000, change order must be taken to City Council for approval.

Schedule Impact:

Original Contract Time (Days):	Original Completion Date: <u>11.1.2008</u>
Current Change Order (Days):	
Previous Change Orders (Days):	
Revised Contract Time (Days): <u>0</u>	Revised Completion Date: <u>N/A</u>

Vendor Acknowledgement: N/A Date: _____

CITY CLEARANCES

Project Mgr/Inspector: 	Date: _____
Program Manager: _____	Date: _____
Budget Approval: _____	Date: _____
Department Head:  (Required only if Line B = \$10,000 - \$14,999)	Date: <u>8/22/07</u>
CM/ACM/ED: _____ (Required only if Line B = \$15,000-\$24,999)	Date: _____
City Secretary: _____	Date: _____
Purchasing Approval/Processing: _____	Date: _____

Distribution:
1 EXECUTED ORIGINAL to City Secretary
1 EXECUTED ORIGINAL to Requesting Department (for Contractor)
1 COPY for Purchasing/Accounting Use

REV 10/2006

